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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jay Cameron Thomas,
10 Petitioner,

11 v.

12 David Shinn, et al.,
13 Respondents.
14

No. CV-22-00345-PHX-DLR (JZB)

ORDER

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16 Before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge
17 John Z. Boyle (Doc. 13) regarding Petitioner’s Petition for Writ of Habeas Corpus filed
18 pursuant to 28 U.S.C. § 2254 (Doc. 1). The R&R recommends that the Petition be denied
19 and dismissed with prejudice and that a Certificate of Appealability and leave to proceed
20 in forma pauperis on appeal be denied. The Magistrate Judge advised the parties they had
21 fourteen days from the date of service of a copy of the R&R to file specific written
22 objections with the Court. (Doc. 13 at 7.) Petitioner filed objections on December 14, 2022
23 (Doc. 14) and Respondents responded on January 12, 2023 (Doc. 17).

24 The Court has considered Petitioner’s objections and reviewed the R&R de novo.
25 *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1). The Court finds the Magistrate Judge
26 correctly determined the Petition is untimely because it was filed more than a year after
27 Petitioner’s judgment became final. The statute of limitations for filing a habeas petition
28 under the Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”) is one year.

1 The R&R found Petitioner's judgment became final on April 26, 2018, a determination
2 Petitioner does not object to. The Petition was filed on March 3, 2022. The R&R correctly
3 determined the Petition was untimely because the one-year statute of limitations expired
4 on April 26, 2019.

5 Petitioner's general objection to "all determinations and all recommendations in
6 report from Magistrate Judge" (Doc. 14 at 1) is not a proper objection under Federal Rule
7 of Civil Procedure 72(b)(2). It is not specific and does not direct the Court to review any
8 particular finding set out in the R&R. Because Petitioner's general objection is not
9 reviewable, that objection is overruled.

10 Petitioner next argues extraordinary circumstances within the prison caused his
11 untimeliness, justifying equitable tolling. Petitioner has the burden of proving his own
12 diligence and the hardship that caused his lack of access to materials was an extraordinary
13 circumstance that caused him to file his petition late. *Waldron-Ramsey-Pacholke*, 556 F.3d
14 1008, 1013 (9th Cir. 2009). However, Petitioner admits it is impossible to "know exactly
15 all the many various times of lock downs, library closers COVID sicknesses, paperwork
16 lost or stolen in transcribed (*sic*) plus riot." (Doc. 14 at 1.) The Petition was filed nearly
17 two years after the expiration of the statute of limitations. Petitioner's arguments, without
18 factual support, do not show that extraordinary circumstances were responsible for a nearly
19 two-year delay in filing or that he was diligent. Petitioner's objection to the R&R's findings
20 based on a claim that his delay was caused by extraordinary circumstances within the
21 prison is overruled.

22 Petitioner's next objection is another extraordinary circumstance contention, which
23 he claims entitles him to equitable tolling. He claims that when he filed his Petition, he had
24 a 13-year history of Parkinson's disease with dementia. Petitioner's mere assertions
25 without proof of his medical condition and the effect the medical condition had on his
26 ability to timely file his Petition are insufficient to show extraordinary circumstances.
27 Petitioner has failed to meet his required burden of showing that he suffers from the alleged
28 health disability and that the disability caused him to miss the filing deadline. Petitioner's

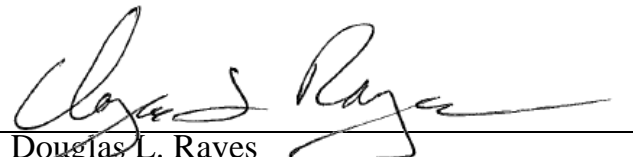
1 objection to the R&R's findings based on a claim that his delay was caused by the
2 extraordinary circumstances of his Parkinson's diagnosis is overruled.

3 In his final objection, Petitioner reasserts the ineffective assistance of counsel claim
4 raised in his Petition. That objection does not address the R&R because the R&R found the
5 Petition was filed after the running of the statute of limitations. The R&R did not make a
6 finding or a recommendation on the merits of that claim. It did not do so because
7 Petitioner's claim of ineffective assistance of counsel claim is procedurally barred. The
8 Court has no basis to review that procedurally barred claim. Petitioner's objection to the
9 R&R's findings based on his reassertion of his ineffective assistance of counsel claim is
10 overruled.

11 There is no basis for statutory or equitable tolling. The R&R correctly determined
12 the Petition is untimely. Therefore,

13 **IT IS ORDERED** that Petitioner's Objections to the R&R (Doc. 14) are
14 **OVERRULED**. The R&R (Doc.13) is **ACCEPTED**. Petitioner's Petition for Writ of
15 Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 1) is **DENIED** and **DISMISSED**
16 with prejudice. A Certificate of Appealability and leave to proceed in forma pauperis on
17 appeal are **DENIED** because the dismissal of the Petition is justified by a plain procedural
18 bar and jurists of reason would not find the procedural ruling debatable, and Petitioner has
19 not made a substantial showing of the denial of a constitutional right. The Clerk of the
20 Court shall enter judgment denying and dismissing Petitioner's Petition for Writ of Habeas
21 Corpus (Doc. 1) with prejudice and terminate this action.

22 Dated this 30th day of January, 2023.

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27 Douglas L. Rayes
28 United States District Judge